IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/04/2005

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THE HON'BLE MR.JUSTICE P.K.MISRA

C.R.P.(NPD) No.1492 of 2003

Rukmani Ammal,
Rep.by her Power Agent
P.R.Subramaniam ... Petitioner

-Vs-

N.Pandurangam ... Respondent

Civil Revision under Section 25 of the Pondicherry Buildings (
Lease and Rent Control) Act, 1969 against the judgment in M.A.No.21 of 199 2, dated 10.02.1995, on the file of Principal District Court, Pondicherry.

!For Petitioner ... Mr.V.Lakshmi Narayanan

^For Respondent ... Mr.Manikantan,
for Mr.G.R.Swaminathan.

:ORDER

The present civil revision is directed against the order passed by the Principal District Court, Pondicherry, in an appeal arising out of a Rent Control Proceedings.

2.The Rent Control Proceedings had been initiated by the present petitioner, who has been found to be the landlady in respect of the disputed premises. It is also not disputed that initially one Narasimalu Chettiar, the father of the present respondent, was the tenant in respect of the premises and he was carrying on his business in such premises. After the death of the aforesaid Narasimalu Chettiar, the present respondent was carrying on his business in paddy and rice on payment of monthly rent of Rs.600/-. According to the petitioner, he was very irregular in payment of rent and he had defaulted to pay rent for the months of July and August, 1990. An Advocate's notice was issued to the respondent and thereafter proceeding for eviction was initiated on the ground that the tenant had wilfully defaulted to pay rent. It was also averred that the premises in question were required for the use of the son of the petitioner for carrying on his business. It was indicated that neither the landlady nor her son was in possession of any non-residential premises within Pondicherry for the purpose of carrying on such business.

3.In the counter filed, the respondent pleaded that rent was being paid regularly and there was no default in payment for the months of July and August, 1990. It was pleaded that his father died in the year 1983, leaving his four sons as his legal heirs, but only the respondent was impleaded and the other three sons were not impleaded as respondents. It was further claimed that he was paying rent on behalf of his brothers to one Subburaman, who was issuing receipts in the name of Narasimalu Chettiar and sons, but subsequently he started issuing receipts only in the name of the respondent. The allegation regarding wilful default and bonafide requirement were also denied.

4.The Rent Controller while negativing the plea of the landlady regarding wilful default, passed an order of eviction on the ground of bonafide requirement. The tenant filed M.A.No.21 of 1992 against the order of eviction; whereas the landlady filed M.A.No.28 of 1992 challenging the finding of the Rent Controller rejecting the contention relating to wilful default. Both the matters were taken up together and by a common judgment, the Rent Controlling Appellate Authority has allowed the appeal of the tenant and dismissed the appeal of the landlady and the finding to the effect that there was no wilful default has been confirmed. The appellate court, however, reversed the finding of the Rent Controller regarding bonafide requirement for the use of the son of the landlady. The present civil revision is by the landlady against the aforesaid conclusions of the appellate Court.

5.So far as wilful default is concerned, both the courts have concurrently found that there was no wilful default. It has been found that the landlady was accepting the rent which was being paid intermittently. It has been further found that for the month of July and August, 1990, the tenant had offered the rent after some delay, but the same had been refused. Keeping in view the limited scope for interference in such matters, I hardly find any scope to come to any different conclusion so far as the finding regarding wilful default is concerned.

6.The main contention raised by the learned counsel for the petitioner is to the effect that the finding of the appellate court regarding the bonafide requirement is unsustainable in law inasmuch as the lower appellate court has reversed the order of the Rent Controller merely on the basis that the son, for whom the landlady wanted the house, was an Advocate and as such, he was not authorised in law to carry on any business. The relevant portion of the finding is to the following effect.

"15..... So, I am convinced that Pandurangam and his business in paddy would suffer very heavily if his eviction is ordered. The balance of convenience is , already, in favour of the continuing business of a particular nature for which that area is earmarked and to think of using the demised premises either for godown or for business for distributorship of Sathe's products would cause hardship to appellant. Admittedly, Gopalakrishnan is an advocate and the question is whether he practises or not. It is admitted by P.W.1 that in HRCOP.105/90 filed by him for eviction of the adjacent premises he had deposed that his son had not suspended the practice officially. In page 13 of xerox copy of the Order in HRCOP.No.105/90 dated 30.09.92 in para 9 Rent Controller had recorded that P.W.1 (P.W.1 herein also) admitted that his son had not obtained order from the Bar Council of Tamil Nadu, with whom he had registered as an advocate, for suspending his practice or to carry on

business other than legal profession. It is further remarked that so long as Gopalakrishnan continues to be a member on the roll of the Bar Council as an advocate, he cannot do any other business. Ex.A.12 and 13 filed before this court do not contain any link between them to correlate both Ex.A.12 and 13. Hence, I am constrained to hold that S.Gopalakrishnan had not suspended his practice as an advocate and hence, continues to be a practising advocate. Point Nos.3 and 4 are answered against the landlady/petitioner."

7.A perusal of the aforesaid portion clearly makes it very clear that merely because the son of the present petitioner had not suspended his licence as advocate, the appellate court thought that he was not entitled to carry on any business. It is no doubt true that under Advocates Act and the Rules made thereunder, an Advocate is prohibited from carrying on any business. However, this is a provision relating to the professional conduct of an advocate, who is expected to maintain profession conduct. To that effect, Rules have been framed providing that Advocates should not carry on any business. However, that does not mean that if an Advocate actually carries on business, such business becomes illegal. If there is any flouting of any profession ethics, it is always open to the Bar Council to take any disciplinary action against such Advocate. However, the power to take disciplinary action is one thing, but to say that no Advocate can carry on any such business is another thing. If actually an Advocate carries on any business, he may be liable to be proceeded against by the Bar Council and his licence may be cancelled or suspended. However, that would not preclude the person concerned to claim any right or possession on the ground of bonafide requirement under Rent Control Law. In my opinion, the appellate court has completely misconceived the nature of restrictions put under the Advocates Act or the Rules made thereunder. Since the finding of the House Rent Controller has been reversed only on the aforesaid misconceived notion, the order passed by the appellate authority on that score cannot be sustained.

8.The appellate authority had also come to the conclusion that necessary parties had not been impleaded in the House Rent Control Proceedings. This was on the basis of the plea taken by the tenant that the deceased Narasimalu Chettiar had four sons and respondent was one such son and three other sons had not been impleaded. However, in coming to such a conclusion, it appears that the appellate authority has ignored the materials on record which clearly indicated that the rent receipts were being issued in the name of the respondent alone and the respondent was carrying on business. Even assuming that the respondent was carrying on business for the joint family, there was no dispute that he was the eldest son. Therefore, he must be presumed to be the 'karta' of the joint family.

9.As per the definition clause contained in Section 2(10) of the Act, "tenant" means any person by whom or on whose account rent is payable and includes the surviving spouse, or any son or daughter, or the legal representative of a deceased tenant who, in the case of a non-residential building, had been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto the death of the tenant and continues to carry on such business thereafter. If the latter portion is applied, it is evident that the present respondent was carrying on the

business even after the death of his father and he was the person who was paying the rent. Therefore, it is obvious that he was the tenant. Even assuming that the tenancy had continued for the joint family business of all the four sons, the respondent, being the eldest son and being actually carrying on business, the non-impleadment of the other three sons was immaterial in the peculiar facts and circumstances of the case. Therefore, the conclusion of the appellate authority cannot be accepted. In the above view of the matter, the order passed by the appellate authority is liable to be quashed and the petitioner is entitled to evict the respondent.

10.Keeping in view the fact that the business was being carried on by the respondent for long time, I feel, interest of justice would be served by allowing the respondent to continue till end of October, 2 005, provided the respondent files an undertaking to pay the rent regularly and vacate the premises on or before 31st October, 2005. Such undertaking shall be filed by the 29th of April, 2005. In case, the respondent refuses to file or refuses to give such undertaking, by virtue of the present order, the petitioner would be entitled to take possession of the premises by initiating appropriate execution case.

11.The civil revision is allowed in the above terms. No costs.

Index:yes
Internet:yes

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